

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF IDAHO**

<b>IN RE</b>	)	
	)	<b>Case No. 99-40812</b>
MATTHEW RYAN STANGER,	)	
	)	<b>SUMMARY ORDER</b>
<b>Debtor.</b>	)	
_____	)	

The Chapter 7 Trustee, L.D. Fitzgerald, objects to the Debtor's claim of exemption in a mountain bike. The Debtor claims the bicycle exempt under either Idaho Code § 11-605(3) as a motor vehicle, or alternatively, under Idaho Code § 11-605(10), the newly enacted provision authorizing an exemption in any property of a debtor not to exceed \$800 in value. The Court conducted a hearing on the Trustee's objection on September 9, 1999. After due consideration of the arguments and briefs of the parties, the Court determines that the Trustee's objection should be sustained for the following reasons.

As the Court announced at the conclusion of the hearing, the mountain bike is not an exempt motor vehicle as that term is used in Idaho Code § 11-605(3). While the Trustee does not dispute that Debtor uses the bicycle as

his sole means of transportation, that fact does not control determination of whether the bicycle is exempt. This Court has traditionally utilized the definition provided in Idaho Code § 49-123(g) for the term “motor vehicle” to determine the scope of the exemption allowed by Idaho Code § 11-605(3). That definition includes only those vehicles which are self-propelled and eligible for registration under the law. See *In re Thomas*, 97.2 I.B.C.R. 39; *In re Baird*, 89 I.B.C.R. 149. Debtor’s bicycle satisfies neither of these requirements. Debtor offers no good reason to depart from this workable construction of the statute. As a result, while Debtor may use his bike as a practical substitute for an automobile or motorcycle, it does not qualify for exemption as a motor vehicle.

The Debtor also cannot exempt the mountain bike under Idaho Code § 11-605(10).<sup>1</sup> While this statute covers any property a debtor may select to exempt, subject to the \$800 dollar limit, it is inapplicable in this case. This provision was added to the exemption laws by the Idaho Legislature in

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<sup>1</sup> Debtor’s original schedule of exempt property claimed the bike exempt only as a motor vehicle. Debtor’s schedules were amended to also claim his bicycle exempt under Idaho Code § 11-605(10) only after the Trustee objected to his original claim. However, the Trustee has not challenged Debtor’s right to amend his exemption schedule. F.R.B.P. 1009(a) allows for amendment of a schedule at any time before the case is closed. The courts have limited the effect of this Rule, somewhat, where the trustee or creditors can demonstrate the a debtor is acting in bad faith or that the creditors will be prejudiced by a proposed exemption amendment. *Martinson v. Michael (In re Michael)*, 163 F.3d 526, 529 (9<sup>th</sup> Cir. 1998)(citing *Magallanes v. Williams (In re Magallanes)*, 96 B.R. 253, 255-56 (9<sup>th</sup> Cir. B.A.P. 1988)).

1999, and became effective on July 1, 1999. S.B. 1088, 55<sup>th</sup> Leg., 1<sup>st</sup> Sess. (Idaho 1999). Obviously, that date has passed. However, Debtor filed his bankruptcy petition on May 17, 1999, prior to the effective date of the new law. The issue is therefore whether the new exemption is retroactively applicable to Debtor's bankruptcy case pending on the effective date of the legislation.

Since amendments to Idaho's exemption laws have been common over the years, the Court faced this issue squarely in the past. In *In re Fackrell*, 90 I.B.C.R. 372, the debtor claimed the benefit of an increase in the amount of the motor vehicle exemption which became effective after the debtor filed her petition. In response to the trustee's objection, the Court held:

The language of Bankruptcy Code Section 522(b) provides that an individual debtor may exempt from property of the estate "any property that is exempt under Federal law, . . . or State or local law that is applicable on the date of the filing of the petition . . . ." Section 522(b)(2)(A) (emphasis added). Debtor argues to the Court that the newly amended [exemption statute] applies to pending bankruptcy cases as of the effective date of the statutory revision. Thus, her amended claim of exemption would be \$1,500 as provided by the amended motor vehicle exemption effective July 1, 1990, and not the \$500 exemption applicable at the time the bankruptcy was filed. However, Debtor's argument is not well taken. It is quite clear that as a matter of federal bankruptcy law under the language of Section 522(b)(2)(A) and pertinent case law that the state law in effect on the date of the petition is controlling. See

*In re Kincaid*, 96 B.R. 1014 (9<sup>th</sup> Cir. B.A.P. 1989); *In re Syrtveit*, 105 B.R. 599 (Bankr. D. Mont. 1989); *In re Kao*, 52 B.R. 452 (Bankr. D. Ore. 1985).

90 I.B.C.R. at 372-373. As Judge Peterson explains in *Syrtveit*, 105 B.R. at 606, to apply postpetition legislative amendments to the exemption statutes to pending bankruptcy cases would allow states to effectively amend § 522(b), something this Court should not endorse absent a clear expression of such as the intent of Congress.<sup>2</sup> In other words, the interpretation given to § 522(b) presents an issue of Federal, not state law.<sup>3</sup>

In addition, the Court has reviewed cases decided by this Court and others since *Fackrell*, and has discovered no departure from the rule

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<sup>2</sup> In the past, this Court has held that the retroactive application of an amendment to the exemption laws to the prejudice of creditors holding claims incurred prior to the amendment may, under some circumstances, be unconstitutional under the Contracts Clause. *Fackrell*, 90 I.B.C.R. at 373, n. 1 (citing *In re Echavarren*, 80 I.B.C.R. 1). The vitality of this holding may be suspect in light of the Ninth Circuit's decision in *Seltzer v. Seltzer (In re Seltzer)*, 104 F.3d 234 (9<sup>th</sup> Cir. 1996), upholding the retroactive application of an increase in the Nevada homestead exemption as against unsecured creditors whose claims were incurred prior to the amendment. However, *Seltzer* is not controlling here since the legislative amendment to the homestead exemption occurred *prior* to the filing of the debtor's bankruptcy petition. 104 F.3d at 235.

<sup>3</sup> While the resolution of this issue is controlled by the terms of the Bankruptcy Code, the approach taken by the Court here is at least arguably consistent with the interpretation given to state law that no Idaho statute should be applied retroactively unless such is expressly declared by the Legislature. Idaho Code § 73-101; *Floyd v. Board of Commrs.*, 953 P.2d 984 (Idaho 1998). No such clear expression is contained in the legislative amendment examined here. Under the circumstances, the Court expresses no opinion on whether the statute would be applied retroactively by Idaho courts as "procedural or remedial" in nature. *Floyd*, 953 F.2d at 988-989.

announced previously. See *In re Clark*, 92 I.B.C.R. 216, 218 & n. 7; *In re Mings*, 91 I.B.C.R. 45, 46. See also *In re Gardner*, 139 B.R. 460, 462 (Bankr. E.D.Ark. 1991) and the cases cited therein.<sup>4</sup>

For these reasons, **IT IS HEREBY ORDERED THAT** Trustee's objection to Debtor's claim of exemption be and is hereby **SUSTAINED**, and Debtor's claim of exemption as to the mountain bicycle be and is hereby **DISALLOWED**.

DATED This 27th day of September, 1999.

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JIM D. PAPPAS  
CHIEF U. S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

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<sup>4</sup> The B.A.P.'s decision in *Kincaid* relied upon by this Court in *Fackrell* was later reversed by the Ninth Circuit, but on grounds other than those relevant to this case. *John Hancock Life Ins. Co. v. Watson*, 917 F.2d 1162 (9<sup>th</sup> Cir. 1990).

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

Steven A. Meikle, Esq.  
P.O. Box 51337  
Idaho Falls, ID 83405

L.D. Fitzgerald  
P.O. Box 6199  
Pocatello, ID 83205

U.S. Trustee  
P.O. Box 110  
Boise, ID 83701

CASE NO: 99-40812

CAMERON S. BURKE, CLERK  
U.S. BANKRUPTCY COURT

DATED: September 27, 1999

By \_\_\_\_\_  
Deputy Clerk